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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/887,194 | 06/22/2001 | Kimberly F. Glassman | BB1449 US NA | 9205 |

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EXAMINER

LACOURCIERE, KAREN A

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1635

DATE MAILED: 06/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------|---|--|--|
| Advisory Action | Application No. 09/887,194 | Applicant(s) GLASSMAN ET AL. | |
| | Examiner Karen A. Lacourciere | Art Unit 1635 | |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 May 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☒ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1,2,6-12,16-19 and 45.

Claim(s) withdrawn from consideration: 3-5,13-15 and 20-44.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Karen A. Lacourciere

Continuation of 2. NOTE: In the proposed amendments filed 05-27-2004, Applicant has cancelled all pending claims and submitted all new claims, which would require further search and new considerations. For example, Applicant has changed the scope of the claims to be directed to soybeans, which requires a new search, and adds specific portions of SEQ ID NO:13, which require a new search. The regions of SEQ ID NO:13 newly recited are listed in alternative language, using and and or, and this alternative language is confusing, as it is not possible to determine what the alternative are, and therefore the proposed amendments bring up issues under 35 USC 112, second paragraph. Applicant has not pointed to support for the newly added limitations of particular regions of SEQ ID NO:13 and no support for such could be found in the originally filed specification or claims and, therefore, the proposed claim amendments bring up the issue of new matter.

Continuation of 3. Applicant's reply has overcome the following rejection(s): If entered, all rejections of record would be overcome by these amendments, however, they would be subject to a new search and would have new rejections raised as discussed above.

Continuation of 5. does NOT place the application in condition for allowance because: Applicant's arguments are directed to the proposed amended claims, which have not been entered.


KAREN A. LACOURCIERE, PH.D
PRIMARY EXAMINER